Minute No 21/1992
(Agendum Nos 14 and 15/1992 refer)

MINUTE OF MEETINGS ON WEDNESDAY, 11 MARCH 1992 AND MONDAY 23 MARCH 1992
UNACCEPTABLE SEXUAL BEHAVIOUR BY MEMBERS OF THE AUSTRALIAN DEFENCE FORCE

INTRODUCTION

1. The Chiefs of Staff Committee and the Secretary, Department of Defence, had for consideration a revised draft Defence Instruction (General) on Unacceptable Sexual Behaviour by members of the Australian Defence Force (attached to agenda No 15/1992).

BACKGROUND

2. On Wednesday, 11 December 1991, the Chiefs of Staff Committee and the Secretary, Department of Defence, had endorsed the principles and policy intent which were to form the basis of a draft Defence Instruction (General) on Unacceptable Sexual Behaviour by members of the Australian Defence Force (ADF). As a result, ACPERS had been tasked to prepare a further draft instruction, taking note of subsequent comments from members of the Committee. However, CDF was not satisfied that the resultant draft instruction adequately addressed the requirements of the ADF and had had it further recast. The revised version (attached to Agendum No 14/1992) was extensively discussed by the Committee on Wednesday, 11 March 1992. The Service Chiefs of Staff acknowledged the extent of the effort involved in preparing the draft, but still had a number of reservations: for instance in relation to the
precision of expression and presentation of the draft policy to ensure its consistent application across the ADF; the need for more emphasis on the policy being directed to aberrant behaviour; the need for consultation about the draft policy and its administration, with senior commanders and unit commanding officers; and the requirement for further careful consideration of the public information aspects, both internally in the ADF and in the wider community. The Committee confirmed the principles of the draft DI(G), and to this end agreed that further amendments be incorporated by ACPERS, who would submit a revised draft to the Chairman for consideration by the Committee on Monday, 23 March 1992. (A draft information statement summarising the essence of the policy, both for promulgation within the ADF and for public dissemination, would also be prepared by DGPI in consultation with ACPERS, ASLEG and the Religious Advisory Committee of the Services).

CONSIDERATION

3. The Chairman observed that the latest draft contained some, but not all of the amendments proposed by the Service Chiefs of Staff; and that those not included had been addressed in the Agenda. The draft before the Committee had been progressively refined and in his view was now suitable for forwarding to the Minister. The policy rested on behaviour that was inimical to the operational effectiveness of the Force, to group cohesion in the Force, and to the maintenance of morale and health. It could be expected as a result of experience gained in the future from the practical application of the policy that some need for amendment would be identified; hence the policy, when agreed, should be reviewed in about June 1993.

4. The Chairman was very concerned that a leak to the media of a simplistic and distorted version of the proposed policy had resulted in many people both in the Force and in the wider community having been unnecessarily misled and angered; and the exposition and explanation of the policy to ADF members, and also to the wider community, would be considerably more difficult in consequence. The method of promulgation
of the agreed policy now required particularly careful consideration. An illustrated brochure could usefully provide a back-up for briefings by unit commanders. Some form of official media release would also be required.

5. The Chairman was concerned that the Human Rights and Equal Opportunity Commission believed, on the basis of complaints it had received, that the present policy on homosexuals in the Australian Defence Force was contrary to the Sex Discrimination and Human Rights and Equal Opportunity Acts.

6. CNS was concerned that a change to the present policy on homosexuality in the ADF would raise problems in terms of security, health and group cohesion, and cause community concerns as to whether the ADF was properly fulfilling its in loco parentis role in relation to minors. CNS recommended that the Minister be apprised of the concerns, and that the matter of seeking an exemption for the ADF from the provisions of relevant legislation relating to homosexuality be put to him. Should this approach not be accepted, the draft Defence Instruction (subject to some minor adjustment) would have to be accepted, and its essence explained clearly to all personnel. It was important that concerns in the areas raised, were addressed in this context.

7. A/CGS had discussed the draft with the three senior Army commanders, with ACRES-A, and with a number of unit commanding officers, all of whom had expressed serious concern about the present policy on homosexuality in the ADF not being retained. Strong feelings were evident on the part of many Army personnel in relation to this, aggravated to a considerable extent by the release to the media about a month ago of a distorted version of the proposed policy. Therefore an approach should be made to the Minister seeking an exemption for the ADF, as CNS had proposed. Should this not succeed, there was no alternative to proceeding with the draft instruction before the Committee (to which A/CGS would propose some further amendments to clarify the requirements of extant legislation) and ensuring that its impact was comprehended by all ADF personnel. A/CGS shared the concerns expressed by
CNS. In relation to alleviation of health risks, all personnel in force elements on relatively short notice for operations should have compulsory HIV testing every three months. A/CGS also expressed concern that no Defence input had been sought before the introduction of subordinate legislation extending the grounds of discrimination to include homosexuality (sexual preference); which raised the important question as to whether Cabinet and the Parliament had been properly informed of all relevant views before accepting such amendments.

8. CAS had changed his views on the best approach to dealing with homosexuality in the ADF as a result of the evident strength of the concerns about this issue held by Air Force personnel, undoubtedly exacerbated by the distorted leak to the media. An exemption for the ADF should be sought, as CNS and A/CGS had advocated. The unique nature of the profession of arms would provide the raison d'etre. Should this initiative not be successful, the guidelines for commanders and unit commanding officers in relation to the implementation of the proposed instruction must be quite clear. In relation to homosexuality the instruction was concerned with behaviour.

9. VCDF said that the revised draft recognized the present provisions of the law and should meet the requirements of the ADF.

10. Mr Ayers recognized that the homosexuality issue was a difficult area to address; but emphasised the importance of endorsing an instruction that not only met the requirements of the ADF but also complied with the provisions of the Sex Discrimination Act and the Human Rights and Equal Opportunity Commission Act. In his view, the draft now before the Committee met these criteria, and would in practice be more effective than the current policy in relation to homosexuality, as well as addressing unacceptable heterosexual behaviour. The key criteria to be applied were operational effectiveness and group cohesion. However, given the evident concerns of the
Chiefs of Staff, the Minister could be approached to consider reference to a Parliamentary Committee. So there were three courses of action:

a. to proceed with the draft instruction (with further agreed amendments); or
b. to seek legislative exemption for the ADF in relation to homosexual policy; or
c. to suggest to Ministers that a reference be sought to a Parliamentary Committee, (which could result in a change to legislation).

11. Dep Sec B&M considered that the latest draft instruction was close to achieving the necessary balance between taking account of changing social mores as reflected in legislation, while ensuring that the operational effectiveness of the ADF was not jeopardised. Dep Sec B&M said that the United States law prohibiting homosexuals from serving in the Armed Forces had been suspended for the duration of the Gulf conflict with no evident effect on operational effectiveness. He therefore queried the soundness of the arguments being advanced linking homosexual behaviour with diminishing operational effectiveness. In his view, the ADF should not adhere to traditional opinions on this subject.

12. The Committee addressed the draft instruction attached to the Agenda together with an amendment to paragraph 1 thereto, proposed by A/CGS. (A revised form of words was subsequently agreed out-of-session). The Committee agreed the need to revise paragraph 14 of Annex A to the draft instruction (in the second sentence) and agreed that paragraph 9d of Annex B to the draft be deleted.

13. The Committee broadly addressed the public information requirements following policy approval by Government. The policy issues would need to be explained clearly, sensitively and simply, so as to be able to be understood by all ADF personnel, and comprehended by the general community. A suitable pamphlet should be prepared to this end. Also, the
timing and content of any public statement regarding the new policy might need to be discussed with the media unit of the Human Rights and Equal Opportunity Commission.

CONCLUSIONS

14. The Committee,

a. endorsed the draft Defence Instruction (General), as amended, (attached), as the basis of a revised policy on Unacceptable Sexual Behaviour in the Australian Defence Force, agreeing that this formulation appeared to meet both the requirements of the Sex Discrimination Act and the Human Rights and Equal Opportunity Commission Act and the inherent requirements of the Force;

b. noted the disquiet expressed by the Service Chiefs of Staff in the light of feedback from their Services as to the extent of the concerns of Navy, Army and Air Force commanders and personnel about the prospect of changes to the current policy on homosexuality in the Australian Defence Force, such concerns having been exacerbated by recent media reports which presented a simplistic and distorted version of the proposed policy;

c. noted that the Chairman of the Defence Sub-Committee of the Joint Parliamentary Committee on Foreign Affairs, Defence and Trade had written to the Minister expressing the concerns of Sub-Committee members that 'a decision to retain homosexuals in the ADF will be made before there has been a reasonable opportunity for public debate on the issue'; and

d. recommended that the Minister consider reference of the proposed new policy to the Defence
Sub-Committee of the Joint Parliamentary Committee on Foreign Affairs, Defence and Trade, to enable a wider, public exposition of the issues.

L.F. MAHONY
Secretary
CHIEFS OF STAFF COMMITTEE
\s/ April 1992
UNACCEPTABLE SEXUAL BEHAVIOUR BY MEMBERS OF THE AUSTRALIAN DEFENCE FORCE

INTRODUCTION

1. Australian human rights legislation, in particular the Sex Discrimination Act (SDA) and the Human Rights and Equal Opportunity Commission Act (HREOC Act), and the changing composition of the Australian Defence Force (ADF) have necessitated the development of an ADF statement of policy regarding the extent to which the ADF may, and should, become concerned with the sexual behaviour of its personnel - given that sexual relations and activities are a normal part of adult life and are primarily and predominantly a private matter for each individual. The central element of the policy stated in the following paragraphs is that the Australian Defence Force (ADF) has no concern with the sexual activities of its members, provided they are not unlawful and are not contrary to or inconsistent with the inherent requirements of the ADF.

AIM

2. The aim of this instruction is to state ADF policy regarding unacceptable sexual behaviour by ADF members and the Service action which may be taken as a consequence.

STATEMENT OF POLICY

3. It is an inherent requirement of ADF service that all ADF members contribute to operational effectiveness, the preservation of group cohesion, respect for command relationships, collective discipline and maintenance of morale. The inherent requirement of the Service places an obligation on Service members to refrain from behaviour which:

a. results in loss of confidence in the member's ability to contribute to the mutual dependence and collective discipline of the group; or

b. is contrary to, or inconsistent with, military objectives and standards of professional and personal conduct required to achieve such objectives.

4. This obligation defines the limits of ADF concern regarding the sexual behaviour of members. Sexual behaviour which is inconsistent with this obligation is termed unacceptable sexual behaviour and will normally warrant disciplinary and/or administrative action, where such behaviour:

a. is prejudicial or is likely to be prejudicial to group cohesion;

b. is prejudicial or is likely to be prejudicial to command relationships;

c. is prejudicial or is likely to be prejudicial to the attainment of military objectives through reducing the operational effectiveness, health or safety of the individual or the group;

d. takes advantage of, or threatens the person or personal integrity of subordinate or underage persons;

e. brings or has the potential to bring discredit on the ADF; or

f. is unlawful under either civil or military law.
5. In certain circumstances in the ADF environment (that is in the environs of the establishment/unit/installation, ship, aircraft or in any other situation in which the member is deployed to perform military duty), and in particular in some training and operational elements, any sexually related behaviour may be contrary to the inherent requirements of the Service and therefore warrant prohibition through the promulgation of a general order as defined in the Defence Force Discipline Act (DFDA).

6. In all ADF and single Service ‘on entry’ training institutions, including the Australian Defence Force Academy, sexual relations and public displays of affection and private intimacy between students and staff, and between all students, regardless of their training status, are to be prohibited within the precincts of the institution and during absences from the institution on duty through the promulgation of a general order as defined in the DFDA.

**DEFINITION**

7. In this instruction "administrative action" is action available to a commander or superior authority to deal with unacceptable behaviour or actions on the part of a member. Administrative action includes, but is not limited to: counselling, adverse report, administrative censure, warning for discharge, involuntary separation from the Service, and recommendations affecting posting, promotion or employment. Administrative action is separate and distinct from disciplinary action, with different rules.

**SEXUAL OFFENCES**

**Offences under Civil Law**

8. When a report of sexual activity indicates that a civil or military offence may have been committed, an assessment is to be made as to whether it is more appropriate for the matter to be investigated as a civil or military offence. Advice should be sought from legal and superior military sources in this event. However, if urgent action is required, such as referral of the victim to a counselling service, this action is to be taken before recourse is made to the advice referred to above. If it is decided that the matter should be investigated as a possible civil offence, the complainant is to be assisted in reporting the matter to the civil police without delay (or to Service authorities if outside Australia). Cases of sexual assault, in particular, require swift referral so that appropriate counselling and medical/forensic tests can be conducted through the expert resources available to the civil authorities. A Commanding Officer’s responsibilities are outlined in Annex A.

**Sexual Offences under DFDA**

9. Activities of a sexual nature which might attract Service disciplinary action include unwelcome sexual behaviour, sexual harassment, obscene behaviour, use of sexist language which provokes anger and could provoke a disturbance, disobedience of an order regarding the elimination of discriminatory practices, and conduct which encourages divisions or disrespect between personnel. In appropriate cases, conduct in the nature of assault might attract disciplinary action. (Annex B provides examples of some specific offences which may be relevant.)

**SEXUAL HARASSMENT**

10. The Commonwealth has acted to eliminate sexual harassment in employment, in the SDA. Sexual harassment is defined as an unwelcome sexual advance, or an unwelcome request for sexual favours, or unwelcome conduct of a sexual nature where the subject of such actions (inter alia):
a. has reasonable grounds for believing that a rejection of
the advance, a refusal of the request, or the taking of
objection to the conduct would disadvantage the member
in any way in employment; or

b. is disadvantaged in employment as a result of rejection
of the advance, refusal of the request or the taking of
objection to the conduct.

11. It is Government policy that employers (which term
includes the ADF for these purposes) provide a work environment
free from sexual harassment, as far as is possible. The failure
by any member to meet this obligation may result in a public
hearing before the Human Rights and Equal Opportunity Commission
(HREOC) and orders to pay compensation to any victim. Such
action would be in addition to any proceedings for a disciplinary
or criminal offence.

12. Sexual harassment under the SDA does not of itself
constitute an offence although it is unlawful and compensation may
be adjudged. However, the conduct giving rise to the allegation
of complaint of sexual harassment may constitute a criminal and/or
disciplinary offence.

RESPONSIBILITIES REGARDING SEXUAL OFFENCES AND SEXUAL HARASSMENT

Responsibility of All Members

13. It is the responsibility of every member to ensure that
complaints of sexual behaviour amounting to an offence and/or
sexual harassment involving ADF members are reported promptly for
investigation and resolution (avenues of complaint are detailed in
Annex C). All personnel within the command chain are to act on
such complaints with speed, thoroughness and impartiality.

Responsibilities of Commanders

14. It is the responsibility of all Commanders to:

a. foster integration, and take all possible action to
prevent or eliminate prejudice, unjustified
discrimination and sexual harassment;

b. maintain an environment where complainants (i.e. victims
and witnesses of sexual behaviour amounting to an
offence and/or sexual harassment) are confident they
will receive support from their superiors; and

c. respond promptly, seriously and with sensitivity to
allegations of behaviour amounting to an offence and/or
sexual harassment.

Sexual harassment has the capacity to seriously erode the mutual
respect between superiors, subordinates and peers which is the
basis of discipline in the ADF. It is therefore imperative that
an early initial assessment be made regarding all allegations of
sexual harassment to determine whether or not the matter should be
handled primarily by disciplinary or administrative means.
Further guidance for Commanding Officers on handling cases of
sexual harassment which amount to disciplinary offences is at
Annex A to this instruction.

Resolution of Complaints Alleging Sexual Harassment

15. In most cases, complaints of sexual harassment can, and
should, be resolved at establishment/unit level. Inevitably the
issue will require tact and sensitivity and in some cases
mediation. Any measures aimed at resolution must include firm
steps necessary to ensure there is no recurrence of sexual
harassment or victimisation of either party. This may require
consideration of posting action or involuntary separation from the
Service.
False Allegations of Sexual Offences/Harassment

16. Where it is established that a complaint of a sexual offence or sexual harassment is false and malicious, vexatious or mischievous, then disciplinary or administrative action against the complainant is to be considered.

OTHER SEXUAL BEHAVIOUR WARRANTING ADMINISTRATIVE ACTION

17. When a member’s sexual behaviour is brought to the attention of the ADF as being inconsistent with or contrary to inherent requirements of ADF service, as stated in paragraphs 3 and 4 of this instruction, or the specific and promulgated requirements of the ADF, Service or unit which are consistent with the requirements in paragraphs 3 and 4, then consideration is to be given to taking administrative action. Such unacceptable behaviour is not subject to rigid definition and the administrative action taken in consequence may vary in nature, significance and impact according to the member’s rank, appointment or duties. (Annex B describes some examples of unacceptable sexual behaviour.)

COMPLIANCE WITH HUMAN RIGHTS LEGISLATION

18. Nothing in this instruction authorises administrative action which would amount to unlawful discrimination under the Sex Discrimination Act or which would be inconsistent with or contrary to any human right as recognised in the Human Rights and Equal Opportunity Commission Act. Annex D outlines the major provisions of those two Acts which are relevant to the policy in this instruction. If there is doubt concerning the validity of administrative action, legal advice should be sought.

Annexes:
A. Guidelines for Commanding Officers
B. Examples of Unacceptable Sexual Behaviour
C. Avenues of Complaint
GUIDELINES FOR COMMANDING OFFICERS

Introduction.
1. This instruction has been prepared to ensure that the ADF as a whole satisfies its legal obligations in a consistent and compassionate manner while recognising and upholding the inherent requirements of ADF service as stated in paragraphs 3 and 4 of the instruction. The identification and handling of sexual behaviour which is unacceptable in the ADF are not matters amenable to set procedural instructions or arbitrary directions to Commanding Officers (compared with the ADF's drugs policy for instance). The prime responsibility for execution of the policy contained in this instruction must rest with individual Commanding Officers.

2. Commanding Officers are to ensure that all members in their unit are aware of the policy contained in this instruction together with unit sources of advice, counselling and information regarding avenues of complaint.

Guide to Action under this Policy.
3. The instruction addresses unacceptable sexual behaviour in three parts:
   a. sexual offences;
   b. sexual harassment which is unlawful under the Sex Discrimination Act; and
   c. other sexual behaviour which is unacceptable because of its adverse impact on the ADF.

Following are some notes for guidance regarding these provisions.

Sexual Offences.
4. When a report of sexual activity indicates that a civil offence appears to have been committed the complainant is to be assisted in reporting the matter to the civil police without delay (or Service authorities if outside Australia). The Commanding Officer's prime responsibilities are to ensure that both the alleged offender and the alleged victim are provided with necessary Service assistance and support and to ensure there is no victimisation or retribution within the unit during the course of investigations and judicial proceedings. If it is considered necessary for the effective functioning of the unit that one or more of the members involved be transferred pending completion of police and judicial action then the Commanding Officer should ensure this is arranged in a manner which does not pre-judge the outcome of the judicial proceedings.

Internal handling of Complaints regarding Sexual Harassment
5. Where sexual harassment is of such gravity as to warrant disciplinary action (because of the nature of the conduct, the ranks of the persons involved, the circumstances in which the conduct took place, or a combination of these and other factors) the appropriate charge will depend on the facts of each case. While cases of harassment might be dealt with as 'prejudicial conduct' cases where the evidence suggests that an assault may have occurred should be charged under the appropriate provision of the DFDA (See Annex B paragraph 2). Legal advice should be sought in making decisions in such cases.

6. A member may choose to lodge a complaint of sexual harassment with an external agency regardless of Service action already taken. For this reason it is essential that adequate records of the initial complaint, unit investigation and consequential action are taken, ensuring in particular that conversations and interviews are properly recorded.
7. Where a complaint of sexual harassment has been made to more than one agency and referred to the Commanding Officer for response, the Commanding Officer is to forward details to the relevant Service Office for determination of further action, forwarding appropriate interim advice to the agencies involved.

8. If one or more complaints are lodged externally while a redress of grievance on the same grounds is being investigated then it may be necessary for the Commanding officer to seek the complainant’s consent to suspend redress action. Usually this requirement will be initiated by the Service Office in consultation with the Assistant Chief of the Defence Force (Personnel) (ACPERS) who is the ADF’s point of contact for both the Defence Force Ombudsman and the Human Rights and Equal Opportunity Commission. In most circumstances ACPERS provides the ADF response to externally lodged complaints as well as negotiating the initial avenue for action.

Handling of allegations or information regarding Other Sexual Behaviour Warranting Service Action

9. When a member’s sexual behaviour is brought to the attention of the Commanding Officer as being unacceptable (rather than unlawful), then the matter should be investigated discreetly and with sensitivity and the Commanding Officer may subsequently consider taking administrative action.

10. The decision whether or not to act on information regarding a member’s sexual behaviour will not be easy and a Commanding Officer may consider it prudent to seek legal and superior military advice before acting - if only to ensure that the commander’s personal beliefs and opinions will not unduly influence considerations.

11. The timing of considerations regarding administrative action is also difficult. If information is acted upon, without sound evidence of an adverse impact on the ADF, then the reasons for adverse administrative action may be successfully challenged as conjectural and lacking substance. If action is delayed, however, then some extraordinary administrative effort may be required to remedy the situation.

12. Commanding Officers are to observe the following requirements in addressing matters of this nature:

   a. the matter is to be handled sensitively and discreetly;
   b. the rules of natural justice are to be applied, in particular the member concerned is to be informed promptly of any investigation and is to be given adequate opportunity to respond to any allegations made against him or her;
   c. the member should be counselled against repetition of the behaviour in question where it is found to contravene the requirements of this instruction; and
   d. each case is to be considered on its merits using only reliable evidence and considering all relevant factors.

Disciplinary Action

13. In more serious cases the behaviour of the member may warrant consideration of disciplinary action. In addition to sexual assault and other offences involving a victim, a member’s sexual behaviour may justify disciplinary action where the behaviour:
may prejudice the discipline of the Defence Force;
may bring discredit on the Defence Force; or
may constitute a breach of a general standing order promulgated by the member’s Service or unit.

Group Prejudice

14. Paragraphs 3 and 4 of this instruction place an obligation on individual members to refrain from behaviour which could be prejudicial to group cohesion. In some circumstances group cohesion may be undermined as much by the actions of the group as the individual, warranting consideration of action which would constructively assist both the group and the individual to identify the causes and minimise the consequences of such prejudice. Paragraph 14 of the instruction lays down the responsibilities of Commanding Officers regarding prejudice or intolerance.

Prohibition of Sexually Related Behaviour within the unit

15. A Commanding Officer who decides that the formal prohibition of sexual activities and related behaviour is warranted should be sensitive to the extent of such behavioural restrictions in adjacent units to ensure members in the same environment are not subject to inconsistent rules, leading to resentment and loss of morale. In all cases, before such a prohibition is promulgated the relevant superior commander is to be informed.

16. The prohibition of such conduct, together with the applicable circumstances and conditions, is to be promulgated in relevant general orders as defined in the DFDA. Any such promulgated order is to:

a. include the nature and scope of administrative action or other consequences which a breach of the order might attract, whether or not the matter is to be dealt with under the DFDA; and

b. accord with the principles of this instruction.

Commanding Officers must be prepared to justify such action in terms of the beneficial and deleterious effects of such an order, the factors considered to necessitate such action and the enforceability of the order. As guidance, an order prohibiting sexually related behaviour should not usually extend beyond the restrictions to be imposed in 'on entry' training institutions as laid down in paragraph 6 of this instruction.

Compliance with Human Rights Legislation in Execution of Policy

17. The ADF works with the HREOC to ensure that ADF policies and practices are neither inconsistent with nor contrary to federal human rights legislation. Where a Commanding Officer is concerned that a particular administrative action might constitute discrimination inconsistent with or contrary to human rights legislation then legal or Service Office advice should be sought before such action is taken.
EXAMPLES OF UNACCEPTABLE SEXUAL BEHAVIOUR

1. This Annex provides examples of unacceptable sexual behaviour in the ADF. The examples are no more than illustrations of behaviour which may attract action or which have warranted action in the past. No example in this Annex may be used as the authority or justification for disciplinary or administrative action. Each case must be considered on its own merits.

Examples of Sexual Activity Amounting to a Service Offence

2. Activities of a sexual nature which may attract disciplinary action under the Defence Force Discipline Act (DFDA) would include offences under the following sections:

   a. Disobedience of a Lawful Command - Sec 27
   b. Failure to Comply with a Lawful General Order - Sec 29
   c. Assault - Sec 33(a)
   d. Creating a Disturbance - Sec 33(b)
   e. Obscene Behaviour - Sec 33(c)
   f. Using Insulting or Provocative Words - Sec 33(d)
   g. Assault on an Inferior - Sec 34
   h. Prejudicial Behaviour - Sec 60
   i. Sexual offence under Part 111A of the NSW Crimes Act in its application to the Jervis Bay Territory - Sec 61 (note: a charge under Sec 61 should not be laid without prior recourse to legal advice)

By way of example, a course of conduct involving pinching or patting of a subordinate may warrant a charge of assault while unwelcome demands for sexual activity may warrant charges of 'prejudicial behaviour'. Sexual activity which may endanger other personnel should be the subject of disciplinary action. However, an isolated incident involving sexist and objectionable comments or leers and gestures with sexual connotations may warrant firm counselling rather than disciplinary action (repeated incidents of such behaviour, in spite of counselling, would warrant consideration of disciplinary action).

Examples of Sexual Harassment

3. An example of sexual harassment is that of a junior female who is afraid to complain about the sexual advances of her male instructor because he has indicated that she will fail to qualify if she rejects him. Sexual harassment also occurs when the victim objects to the advance, request or conduct and is then unfairly treated in employment. An example would be the removal of a female officer from an appointment because of her outspoken objection to sexually explicit language directed to her by male subordinates.

4. The examples used in paragraph 3 above are not intended to suggest that females are the only victims and males the only perpetrators of sexual harassment. A female member might force the continuation of a sexual relationship with a male superior by threatening to inform his superiors or spread rumours if he does not agree. Fear of official retribution, for instance reposting action, may be the sole reason for the male's continuation of the relationship. Such a threat by the female member may constitute sexual harassment.
5. Finally, sexual harassment may occur between members of the same gender. For instance, a female member may be afraid to complain about the unwelcome sexual advances of her female superior because she has good reason to believe she will receive a poor annual assessment if she complains or otherwise objects to the advances. This constitutes sexual harassment.

Examples of Unacceptable Harassment

6. Bullying and other forms of harassment of weaker members by stronger members is sometimes labelled sexual harassment when it is directed by members of one gender against members of the other gender. Such behaviour may not constitute sexual harassment as defined in the SDA; but may nevertheless constitute behaviour contrary to the inherent requirement of ADF service. Group intolerance of, or prejudice against, an individual member for instance because of the individual's sexual preference, which results in victimisation is also unacceptable harassment. (See also paragraph 14 of Annex A.)

Examples of Unacceptable Sexual Behaviour

7. Any unwelcome sexual advance, unwelcome request for sexual favours or unwelcome conduct of a sexual nature is unacceptable sexual behaviour and warrants disciplinary or administrative action against the perpetrator. (Conduct of a sexual nature includes the making to, or in the presence of a person, a statement of a sexual nature, concerning that person, whether the statement is made orally or in writing.) Unwelcome sexual behaviour does not include action or conduct which reflects mutual respect, friendship or attraction.

8. Some examples of unwelcome sexual behaviour are:
   a. spreading rumours regarding a colleague's sexual life;
   b. public discussion of sexual activities - with the intention of embarrassing colleagues; and
   c. derogatory remarks to a colleague regarding their sexual appeal.

9. Some other circumstances in which sexual behaviour would be unacceptable, together with the reasons for the unacceptability, include:
   a. indiscreet sexual relationships between a superior and a subordinate, resulting in damage to unit cohesion and an undermining of the superior's authority;
   b. public flaunting and advocacy of a particular sexual proclivity, causing offence to members of the member's group and thus liable to provoke a breakdown in group cohesion and loss of professional respect; and
   c. sexual relationships and activities conducted openly in the communal environment of a mess or barrack block, or encouraging younger members to accept participation in such activities as a requirement of communal living.
General Avenues of Complaint

1. A member who has cause to complain about unacceptable sexual behaviour in the ADF environment should complain to a superior officer in the member's chain of command. If for any reason this is not appropriate or the member believes that lodgement of a complaint may provoke hostility or disbelief, then an application for redress of grievance should be lodged with the member's Commanding Officer. (See DI(G) PERS 34-1.) This avenue of complaint places a legal onus on the Commanding Officer to have the matter investigated swiftly and the grievance redressed without victimizing, penalising or prejudicing the complainant.

2. In some circumstances a member may have grounds for not wishing to complain to any authority within the chain of command. The Defence Force Ombudsman may accept the complaint for investigation if he is satisfied special circumstances exist.

Complaints concerning Sexual Harassment

3. While it is preferable that Service action be taken to investigate and resolve complaints of sexual harassment members also have the right to refer the matter to the HREOC, under the provisions of the Sex Discrimination Act. It should be recognised that this avenue may not satisfy the immediate military objective of stopping the harassment, and acting against the offender, in a timely manner.

Complaints by Personnel subjected to Administrative Action

4. When administrative action is considered to be warranted as a result of non-compliance with this instruction the rules of natural justice require that:

a. the member be advised of the proposed action;

b. the member be given access to all adverse material upon which the decision is based; and

c. the member be allowed a reasonable opportunity to comment on the adverse material and the proposed action.

If the affected member is aggrieved by the decision to take administrative action, or the decision making process, then the member may submit an application for redress of grievance.

Complaints Concerning Discrimination.

5. A member who believes that he or she has been discriminated against, contrary to the provisions of Commonwealth human rights legislation, may submit a complaint to the HREOC, however members who are considering this avenue of complaint should be encouraged to use the redress of grievance avenue initially - as a remedy of first resort.

Concurrent Complaints

6. When a complaint is lodged concurrently through more than one avenue of complaint, the ADF, in consultation with relevant external agencies, and where appropriate the complainant, will suspend action on all but one statement of complaint in order to facilitate speedy resolution of the matter and consistency in the advice provided.
OUTLINE OF RELEVANT PROVISIONS OF THE SEX DISCRIMINATION ACT AND
THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION ACT

The Sex Discrimination Act

1. The Sex Discrimination Act was passed by the Commonwealth Parliament in 1984. The Act gives effect to Australia’s international obligations under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and promotes recognition of the principle of equality between men and women. It also aims to eliminate sexual harassment at work and in educational institutions.

2. The major objects of the Act are:
   - to promote equality of men and women;
   - in certain areas to eliminate discrimination on the basis of sex, marital status or pregnancy; and
   - to eliminate discrimination involving sexual harassment.

3. The provisions of the Sex Discrimination Act:
   - make certain forms of sex discrimination unlawful;
   - provide for investigation of complaints of unlawful discrimination;
   - allow the Human Rights and Equal Opportunity Commission to intervene in court proceedings which involve sex discrimination;
   - make provision for legislation to be examined to ensure that it is consistent with the objects of the Act or for new legislation to be proposed; and
   - give the Commission an educational and research role in regard to the Act.

4. Sexual harassment in the workplace or in education is unlawful under the Sex Discrimination Act. Where a person who is sexually harassed in these circumstances acts to prevent further harassment, the Sex Discrimination Act protects that person against disadvantage and/or dismissal. Sexual harassment is defined in paragraph 10 of this DI(G).

5. A complaint of an act of sexual harassment (or other sex discrimination) may be made by:
   - any person or persons affected by the act;
   - any person or persons included in a group of people on behalf of the group;
   - a trade union on behalf of its members.

All complaints must be submitted to the Human Rights and Equal Opportunity Commission in writing.
6. If after a conciliation and inquiry process the Commission is satisfied that the complaint is substantiated then a determination can be made. Such determinations may include declarations such as:

- that loss or damage suffered is to be redressed;
- that a person should be employed, re-employed or promoted; and/or
- that damages be paid by way of compensation for loss or damage suffered (but this does not apply to a representative action).

If necessary, determinations may be enforced by the Federal Court.

The Human Rights and Equal Opportunity Commission Act 1986

7. The Human Rights and Equal Opportunity Commission Act 1986 (HREOC Act) gives effect to Australia's international obligations under the following international human rights instruments:

- International Covenant on Civil and Political Rights;
- Declaration of the Rights of the Child;
- Declaration on the Rights of Disabled Persons;
- Declaration on the Rights of Mentally Retarded Persons; and
- Convention Concerning Discrimination in Respect of Employment and Occupation (International Labour Organisation number 111)

8. ILO Convention 111 is concerned with discrimination in employment and occupation. This Convention ensures that all people have the right to equal treatment in employment and occupation without discrimination on the basis of:

- race;
- colour;
- national extraction;
- social origin;
- sex;
- religion; or
- political opinion.

9. Recent federal regulations also apply this Convention to discrimination on the basis of:

- age;
- disability (physical, intellectual, psychiatric or mental);
- impairment;
- sexual preference;
- marital status;
- criminal record;
- medical record; and
- trade union activity.

10. Section 3 of the HREOC Act defines discrimination as being any distinction, exclusion or preference made on the basis of any of the grounds outlined above that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation - but does not include any distinction, exclusion or preference, in respect of a particular job, based on the inherent requirements of the job.

PRESENT
Chairman:
General P.C. Gration AC OBE

In Attendance:
Mr A.J. Ayers AO

Members:
Vice Admiral I. D.G. MacDougall AO
Air Marshal R.G. Funnell AC
Major General J.C. Grey AO

Invited Officer:
Vice Admiral A.L. Beaumont AC

Advisers:
Mr R.N. McLeod
Rear Admiral E.G. Stubington AM
Lieutenant-Colonel M.A. Fletcher

Chief of the Defence Force
Secretary, Department of Defence
Chief of Naval Staff
Chief of the Air Staff
Acting Chief of the General Staff
Vice Chief of the Defence Force
Deputy Secretary Budget and Management
Assistant Chief of Naval Staff – Personnel
Staff Officer Human Resource Management
Agendum No 15/1992

UNACCEPTABLE SEXUAL BEHAVIOUR BY MEMBERS OF THE AUSTRALIAN DEFENCE FORCE

1. Attached for consideration by the Committee at its meeting on Monday, 23 March 1992 (at 1.45p.m.) is a further paper on Unaccepta ble Sexual Behaviour by Members of the Australian Defence Force.

2. The draft Defence Instruction General attached to the paper has been revised to take account of the discussion of Agendum No 14/1992 at the meeting of the Committee on Wednesday, 11 March 1992, and subsequent comments from the Service Offices and ASLEG.

3. The Chairman has invited the Secretary, Department of Defence; DepSec B&M, ACPERS, and Lieutenant-Colonel Fletcher.

L.F. MAHONY
Secretary
CHIEFS OF STAFF COMMITTEE

20 MARCH 1992

COMMITTEE - IN - CONFIDENCE
ACPERS REPORT TO THE CHIEFS OF STAFF COMMITTEE

UNACCEPTABLE SEXUAL BEHAVIOUR BY MEMBERS OF THE ADF

Reference:

A. COSC Agendum No 14/1992 (first considered 11 March 1992)

1. Following consideration of the draft DI(G) on unacceptable sexual behaviour by the Chiefs of Staff Committee on 11 March, the instruction, amended to incorporate in-session changes, was circulated for comments or clearance prior to further consideration on 23 March. Legal clearance of the instruction, required for promulgation, was also sought.

2. This report addresses the out of session comments received from the Chiefs of Staff and ASLEG. Changes which appeared to warrant inclusion without discussion have been included in the enclosed revised instruction and are underlined and sidelined. These changes are generally concerned with clarification of aspects which have previously been agreed by the Chiefs of Staff Committee.

3. A number of comments and proposed amendments have not been incorporated in the instruction. These changes/amendments are discussed below in the paragraph sequence of the instruction. The reasons for the proposals have necessarily been abbreviated but considerable effort has been made to properly represent the concerns expressed.

Paragraph 1.

4. Army suggested that paragraph 1 appears inconsistent with paragraphs 3 and 4 and proposed a rewrite of the paragraph as follows:

"Sexual relations and activities are a normal part of adult life and are essentially a private matter. However, the Australian Defence Force (ADF) will take action when a member’s sexual activities are unlawful and/or contrary to or inconsistent with inherent requirements of the Service."

Comment: The Chiefs of Staff Committee discussed this paragraph at length on 11 March and the present wording was agreed. There has been no substantial reason given for the proposed change and in any case the re-write is not strictly accurate as action may not be taken in every case. Moreover, the DI(G) should not disguise the issue of sexual preference under the title of sexual acts.

5. RAAF sought two changes:

a. delete "sexual preference" because it is provocative and misleading as the instruction is not about sexual preference; and

b. delete the word "inherent" wherever appearing (paragraphs 1, 3, 5, 17 and Annex A paragraph 1.) as it is superfluous.

Comments: The inclusion of "sexual preference" is addressed above. The term "inherent requirements" is deliberately used. It is taken directly from Section 3 of the HRBEOC Act in which it is the one defence available to an employer who has need to discriminate for instance on grounds of sexual preference. In so far as such discrimination might be required the ADF is stating what the inherent requirements of the ADF job are as a standing defence. Deletion of "inherent" diminishes the subtle but important nexus between our requirements and the provisions of the HRBEOC Act.
Paragraph 5.

6. Navy sought to insert the words "whether deployed or otherwise" after "duty" in line 4. The intent is to provide Navy with authority to prohibit sexually related behaviour either outside the ADF environment or when members are not on duty or both - for instance when members are on leave overseas.

Comment: Navy's proposed wording does not appear to achieve the broader parameters sought. An alternative amendment which addresses the intent is in the enclosed instruction. The amendment in the instruction recognises Navy's concern regarding, for instance, a long term deployment in the Middle East, where a member's duty status while ashore may be unclear.

Paragraph 6

7. Navy requested that the directive in paragraph 6 be extended to include a prohibition on sexually related behaviour between staff and students in any circumstances (including whilst on leave). Navy seeks also to extend the directive to apply even when either the student or the staff member ceases to hold that status (thus it would apply to a graduate married to a staff member). As an alternative Navy seeks to have the flexibility to extend the parameters of the directive in the paragraph by inserting after "academy" the words: "as a minimum".

Comment: Navy's proposals are viewed as unreasonable, invasive of privacy, unenforceable and unacceptable as a standing directive by CDF and the Secretary - given that there are many circumstances in which application of the directive would attract criticism as creating anomalies, inequities, inconsistencies or unreasonable discrimination. Such a broad directive is only valid if it is capable of 100% application and enforcement. The proposal does not recognise those genuine, discreet and possibly permanent relationships which would preclude such total application and enforcement.

The words "as a minimum" are superfluous given the provisions of paragraph 5 and paragraph 16 of Annex A.

Army supports Navy's comments regarding paragraph 6 and seeks to further extend the effect of the directive to include recruits at other than "on entry" institutions. This latter point is not agreed because of the possible anomalies and inequities created because the Army proposal is directed at only a particular group of members - leading to more than one set of rules in an institution. The Army requirement is considered to be adequately addressed by the provisions of paragraph 5 which covers other training institutions.

Paragraph 14.

8. Army sought to delete the words "prevent or eliminate" as being impractical, and insert "discourage".

Comment: The concern is noted but the proposed word is far short of a Commanding Officer's responsibilities even now. An alternative form of words has been incorporated in the text.

Former Paragraph 18.

9. Army believes some words used are subjective and require amplification. Given the amount of controversy over this paragraph it has been deleted as it was intended only as guidance to members unused to perhaps less than courteous behaviour. It does not warrant the amplification sought.
New Paragraph 18.

10. Army recommends new paragraph 18 be deleted. Alternatively the paragraph should be expanded to explain its relevance or an annex included setting out the provisions of the Acts. (The last comment was passed by DCGS following the meeting of the Services on 19 March).

Comments:

The paragraph does not infer there is doubt about the policy. The paragraph applies to administrative action being taken, not the policy which gives discretion to take administrative action. The paragraph makes it clear that if a CO discriminates on grounds of sexual preference, without there being justification based on an inherent requirement of the job, then the CO cannot use the instruction to legitimise his discriminatory action.

The paragraph should remain. It has been amended to overcome some of Army's concerns and an Annex D is being prepared for distribution prior to the Chiefs of Staff Committee meeting on 23 March. ASLEG has confirmed that the two Acts are to be incorporated into the Manual of Defence Legislation this year following a request from HQ ADF early last year.

Annex A paragraph 16

11. Navy sought to add the words: "but it may do so where justifiable in accordance with the principles of this instruction" at the end of paragraph 16 because the paragraph as presently written appears overly restrictive. Army agreed with the Navy proposal but sought deletion of the words "on entry" to reflect the Army amendment in paragraph 6 of the instruction (see paragraph 7 above.)

Comment: The present words were intended to set out the limits in all but the most exceptional cases. The present words do not preclude the flexibility sought by Navy but encourage a consistent approach across all Service elements in all but the exceptional circumstances foreseen by Navy in addressing paragraph 5.

Army's amendment is not supported for the reasons given in paragraph 7 above.

TEXT OF PROPOSED PAMPHLET

12. A first draft text of a pamphlet was distributed to the Chiefs of Personnel on 13 March for comments. While Navy and Air Force offered minor comments, Army requested that the text be rewritten in simpler language.

Comments:

The text of the proposed pamphlet has been rewritten in simplified form and is enclosed.

CADET FORCES

13. The Services have indicated that while the DI(G) cannot be applied to the Cadet Forces in its present form, the policy intent is relevant and necessary to that component. It would be appropriate for the Chiefs of Staff Committee to agree that the policy principles as enunciated in paragraphs 1 to 6 of the instruction are to be applied to the Cadet Forces through single Service instructions.
RECOMMENDATIONS

14. It is recommended that the Chiefs of Staff Committee:

a. endorse the enclosed draft DI(G) for submission to the Minister for policy approval prior to promulgation action as a DI(G);

b. endorse the cancellation of DI(G) PERS 15-3 and 35-1 concurrent with the promulgation of the new DI(G);

c. in considering the PR plan, note the HREOC proposal that the timing and content of any public statement regarding the policy be discussed with the HREOC media unit to facilitate a complementary and supportive statement from that body;

d. note the need for supplementary/complementary instructions regarding procedures for the investigation and prosecution of sexual offences (including Navy’s present instruction), and the handling of sexual harassment in integrated units;

e. endorse the text of the public relations pamphlet for production;

f. endorse the release of the public relations pamphlet concurrently with the public announcement of the policy; and

g. agree that the Chiefs of Staff issue instructions to the Cadet Forces on unacceptable sexual behaviour, consistent with the approved DI(G).

PERSONNEL DIVISION

March 1992

Enclosures:

1. Draft Defence Instruction: Unacceptable Sexual Behaviour by Members of the ADF (less Annex D - to be distributed separately)

2. Draft text of pamphlet.
INTRODUCTION

1. Sexual relations and activities are a normal part of adult life and are primarily and predominantly a private matter for each individual. The Australian Defence Force (ADF) has no concern with the sexual preferences of its members, or with their sexual activities, provided they are not unlawful and are not contrary to or inconsistent with the inherent requirements of the Service.

AIM

2. The aim of this instruction is to state ADF policy regarding unacceptable sexual behaviour by ADF members and the Service action which may be taken as a consequence.

STATEMENT OF POLICY

3. It is an inherent requirement of ADF service that all ADF members contribute to operational effectiveness, the preservation of group cohesion, respect for command relationships, collective discipline and maintenance of morale. The inherent requirement of the Service places an obligation on Service members to refrain from behaviour which:

a. results in loss of confidence in the member’s ability to contribute to the mutual dependence and collective discipline of the group; or

b. is contrary to, or inconsistent with, military objectives and standards of professional and personal conduct required to achieve such objectives.

4. This obligation defines the limits of ADF concern regarding the sexual behaviour of members. Sexual behaviour which is inconsistent with this obligation is termed unacceptable sexual behaviour and will normally warrant disciplinary and/or administrative action, where such behaviour:

a. is prejudicial or is likely to be prejudicial to group cohesion;

b. is prejudicial or is likely to be prejudicial to command relationships;

c. is prejudicial or is likely to be prejudicial to the attainment of military objectives through reducing the operational effectiveness, health or safety of the individual or the group;

d. takes advantage of, or threatens the person or personal integrity of subordinate or underage persons;

e. brings or has the potential to bring discredit on the ADF; or

f. is unlawful under either civil or military law.
5. In certain circumstances in the ADF environment (that is in the environ of the establishment/unit/installation, ship, aircraft or in any other situation in which the member is deployed to perform military duty), and in particular in some training and operational elements, any sexually related behaviour may be contrary to the inherent requirements of the Service and therefore warrant prohibition through the promulgation of a general order as defined in the Defence Force Discipline Act (DFDA).

6. In all ADF and single Service 'on entry' training institutions, including the Australian Defence Force Academy, sexual relations and public displays of affection and private intimacy between students and staff, and between all students, regardless of their training status, are to be prohibited within the precincts of the institution and during absences from the institution on duty through the promulgation of a general order as defined in the DFDA.

DEFINITION

7. In this instruction "administrative action" is action available to a commander or superior authority to deal with unacceptable behaviour or actions on the part of a member. Administrative action includes, but is not limited to: counselling, adverse report, administrative censure, warning for discharge, involuntary separation from the Service, and recommendations affecting posting, promotion or employment. Administrative action is separate and distinct from disciplinary action, with different rules.

SEXUAL OFFENCES

Offences under Civil Law

8. When a report of sexual activity indicates that a civil or military offence may have been committed, an assessment is to be made as to whether it is more appropriate for the matter to be investigated as a civil or military offence. Advice should be sought from legal and superior military sources in this event. However, if urgent action is required, such as referral of the victim to a counselling service, this action is to be taken before recourse is made to the advice referred to above. If it is decided that the matter should be investigated as a possible civil offence, the complainant is to be assisted in reporting the matter to the police. Cases of sexual assault, in particular, require swift referral so that appropriate counselling and medical/forensic tests can be conducted through the expert resources available to the civil authorities. A Commanding Officer's responsibilities are outlined in Annex A.

Sexual Offences under DFDA

9. Activities of a sexual nature which might attract service disciplinary action include unwelcome sexual behaviour, sexual harassment. Obscene behaviour, use of sexist language which provokes anger and could provoke a disturbance, disobedience of an order regarding the elimination of discriminatory practices, and conduct which encourages divisions or disrespect between personnel. In appropriate cases, conduct in the nature of assault might attract disciplinary action. (Annex B provides examples of some specific offences which may be relevant.)

SEXUAL HARASSMENT

10. The Commonwealth has acted to eliminate sexual harassment in employment, in the Sex Discrimination Act 1984 (SDA). Sexual harassment is defined as an unwelcome sexual advance, or an unwelcome request for sexual favours, or unwelcome conduct of a sexual nature where the subject of such actions (inter alia):
has reasonable grounds for believing that a rejection of the advance, a refusal of the request, or the taking of objection to the conduct would disadvantage the member in any way in employment; or

b. is disadvantaged in employment as a result of rejection of the advance, refusal of the request or the taking of objection to the conduct.

11. It is Government policy that employers (which term includes the ADF for these purposes) provide a work environment free from sexual harassment, as far as is possible. The failure by any member to meet this obligation may result in a public hearing before the Human Rights and Equal Opportunity Commission (HREOC) and orders to pay compensation to any victim. Such action would be in addition to any proceedings for a disciplinary or criminal offence.

12. Sexual harassment under the SDA does not of itself constitute an offence although it is unlawful and compensation may be adjudged. However, the conduct giving rise to the allegation or complaint of sexual harassment may constitute a criminal and/or disciplinary offence.

RESPONSIBILITIES REGARDING SEXUAL OFFENCES AND SEXUAL HARASSMENT

Responsibility of All Members

13. It is the responsibility of every member to ensure that complaints of sexual behaviour amounting to an offence and/or sexual harassment involving ADF members are reported promptly for investigation and resolution (avenues of complaint are detailed in Annex C). All personnel within the command chain are to act on such complaints with speed, thoroughness and impartiality.

Responsibilities of Commanders

14. It is the responsibility of all Commanders to:

a. foster integration, and take all possible action to prevent or eliminate prejudice, unjustified discrimination and sexual harassment;

b. maintain an environment where complainants (ie victims and witnesses of sexual behaviour amounting to an offence and/or sexual harassment) are confident they will receive support from their superiors; and

c. to respond promptly, seriously and with sensitivity to allegations of behaviour amounting to an offence and/or sexual harassment.

Sexual harassment has the capacity to seriously erode the mutual respect between superiors, subordinates and peers which is the basis of discipline in the ADF. It is therefore imperative that an early initial assessment be made regarding all allegations of sexual harassment to determine whether or not the matter should be handled primarily by disciplinary or administrative means. Further guidance for Commanding Officers on handling cases of sexual harassment which amount to disciplinary offences is at Annex A to this instruction.
Resolution of Complaints Alleging Sexual Harassment

15. In most cases, complaints of sexual harassment can, and should, be resolved at establishment/unit level. Inevitably the issue will require tact and sensitivity and in some cases mediation. Any measures aimed at resolution must include firm steps necessary to ensure there is no recurrence of sexual harassment or victimisation of either party. This may require consideration of posting action or involuntary separation from the Service.

False Allegations of Sexual Offences/Harassment

16. Where it is established that a complaint of a sexual offence or sexual harassment is false and malicious, vexatious or mischievous, then disciplinary or administrative action against the complainant is to be considered.

OTHER SEXUAL BEHAVIOUR WARRANTING ADMINISTRATIVE ACTION

17. When a member’s sexual behaviour is brought to the attention of the ADF as being inconsistent with or contrary to inherent requirements of ADF service, as stated in paragraphs 3 and 4 of this instruction, or the specific and promulgated requirements of the ADF, Service or unit which are consistent with the requirements in paragraphs 3 and 4, then consideration is to be given to taking administrative action. Such unacceptable behaviour is not subject to rigid definition and the administrative action taken in consequence may vary in nature, significance and impact according to the member’s rank, appointment or duties. (Annex B describes some examples of unacceptable sexual behaviour.)

COMPLIANCE WITH HUMAN RIGHTS LEGISLATION

18. Nothing in this instruction authorises administrative action which would amount to unlawful discrimination under the Sex Discrimination Act or which would be inconsistent with or contrary to any human right as recognised in the Human Rights and Equal Opportunity Commission Act. Annex D outlines the major provisions of those two Acts which are relevant to the policy in this instruction. If there is doubt concerning the validity of administrative action, legal advice should be sought.

Annexes:
A. Guidelines for Commanding Officers
B. Examples of Unacceptable Sexual Behaviour
C. Avenues of Complaint
GUIDELINES FOR COMMANDING OFFICERS

Introduction.

1. This instruction has been prepared to ensure that the ADF as a whole satisfies its legal obligations in a consistent and compassionate manner while recognising and upholding the inherent requirements of ADF service as stated in paragraphs 3 and 4 of the instruction. The identification and handling of sexual behaviour which is unacceptable in the ADF are not matters amenable to set procedural instructions or arbitrary directions to Commanding Officers (compared with the ADF's drugs policy for instance). The prime responsibility for execution of the policy contained in this instruction must rest with individual Commanding Officers.

2. Commanding Officers are to ensure that all members in their unit are aware of the policy contained in this instruction together with unit sources of advice, counselling and information regarding avenues of complaint.

Guide to Action under this Policy.

3. The instruction addresses unacceptable sexual behaviour in three parts:
   a. sexual offences;
   b. sexual harassment which is unlawful under the Sex Discrimination Act; and
   c. other sexual behaviour which is unacceptable because of its adverse impact on the ADF.

Following are some notes for guidance regarding these provisions.

Sexual Offences.

4. When a report of sexual activity indicates that a civil offence appears to have been committed the complainant is to be assisted in reporting the matter to the civil police without delay (or Service authorities if outside Australia). The Commanding Officer's prime responsibilities are to ensure that both the alleged offender and the alleged victim are provided with necessary Service assistance and support and to ensure there is no victimisation or retribution within the unit during the course of investigations and judicial proceedings. If it is considered necessary for the effective functioning of the unit that one or more of the members involved be transferred pending completion of police and judicial action then the Commanding Officer should ensure this is arranged in a manner which does not pre-judge the outcome of the judicial proceedings.

Internal handling of Complaints regarding Sexual Harassment

5. Where sexual harassment is of such gravity as to warrant disciplinary action (because of the nature of the conduct, the ranks of the persons involved, the circumstances in which the conduct took place, or a combination of these and other factors) the appropriate charge will depend on the facts of each case. While cases of harassment might be dealt with as 'prejudicial conduct' cases where the evidence suggests that an assault may have occurred should be charged under the appropriate provision of the DFDA (See Annex B paragraph 2). Legal advice should be
6. A member may choose to lodge a complaint of sexual harassment with an external agency regardless of Service action already taken. For this reason it is essential that adequate records of the initial complaint, unit investigation and consequential action are taken, ensuring in particular that conversations and interviews are properly recorded.

7. Where a complaint of sexual harassment has been made to more than one agency and referred to the Commanding Officer for response, the Commanding Officer is to forward details to the relevant Service Office for determination of further action, forwarding appropriate interim advice to the agencies involved.

8. If one or more complaints are lodged externally while a redress of grievance on the same grounds is being investigated then it may be necessary for the Commanding officer to seek the complainant's consent to suspend redress action. Usually this requirement will be initiated by the Service Office in consultation with the Assistant Chief of the Defence Force (Personnel) (ACPERS) who is the ADF's point of contact for both the Defence Force Ombudsman and the Human Rights and Equal Opportunity Commission. In most circumstances ACPERS provides the ADF response to externally lodged complaints as well as negotiating the initial avenue for action.

Handling of allegations or information regarding Other Sexual Behaviour Warranting Service Action

9. When a member's sexual behaviour is brought to the attention of the Commanding Officer as being unacceptable (rather than unlawful), then the matter should be investigated discreetly and with sensitivity and the Commanding Officer may subsequently consider taking administrative action.

10. The decision whether or not to act on information regarding a member's sexual behaviour will not be easy and a Commanding Officer may consider it prudent to seek legal and superior military advice before acting - if only to ensure that the commander's personal beliefs and opinions will not unduly influence considerations.

11. The timing of considerations regarding administrative action is also difficult. If information is acted upon, without sound evidence of an adverse impact on the ADF, then the reasons for adverse administrative action may be successfully challenged as conjectural and lacking substance. If action is delayed, however, then some extraordinary administrative effort may be required to remedy the situation.

12. Commanding Officers are to observe the following requirements in addressing matters of this nature:

a. the matter is to be handled sensitively and discreetly;

b. the rules of natural justice are to be applied, in particular the member concerned is to be informed promptly of any investigation and is to be given adequate opportunity to respond to any allegations made against him or her;

c. the member should be counselled against repetition of the behaviour in question where it is found to contravene the requirements of this instruction; and

d. each case is to be considered on its merits using only reliable evidence and considering all relevant factors.
Disciplinary Action

13. In more serious cases the behaviour of the member may warrant consideration of disciplinary action. In addition to sexual assault and other offences involving a victim, a member’s sexual behaviour may justify disciplinary action where the behaviour:

   a. may prejudice the discipline of the Defence Force;
   b. may bring discredit on the Defence Force; or
   c. may constitute a breach of a general standing order promulgated by the member’s Service or unit.

Group Prejudice

14. Paragraphs 3 and 4 of this instruction place an obligation on individual members to refrain from behaviour which could be prejudicial to group cohesion. In some circumstances group cohesion may be undermined because of the group’s prejudice against individual members, warranting consideration of action against the group rather than the individuals affected. Paragraph 14 of the instruction lays down the responsibilities of Commanding Officers regarding group prejudice or intolerance.

Prohibition of Sexually Related Behaviour within the unit

15. A Commanding Officer who decides that the formal prohibition of sexual activities and related behaviour is warranted should be sensitive to the extent of such behavioural restrictions in adjacent units to ensure members in the same environment are not subject to inconsistent rules, leading to resentment and loss of morale. In all cases, before such a prohibition is promulgated the relevant superior commander is to be informed.

16. The prohibition of such conduct, together with the applicable circumstances and conditions, is to be promulgated in relevant general orders as defined in the DFDA. Any such promulgated order is to:

   a. include the nature and scope of administrative action or other consequences which a breach of the order might attract, whether or not the matter is to be dealt with under the DFDA; and
   b. accord with the principles of this instruction.

Commanding Officers must be prepared to justify such action in terms of the beneficial and deleterious effects of such an order, the factors considered to necessitate such action and the enforceability of the order. As guidance, an order prohibiting sexually related behaviour should not usually extend beyond the restrictions to be imposed in ‘on entry’ training institutions as laid down in paragraph 6 of this instruction.

Compliance with Human Rights Legislation in Execution of Policy

17. The ADF works with the HREOC to ensure that ADF policies and practices are neither inconsistent with nor contrary to federal human rights legislation. Where a Commanding Officer is concerned that a particular administrative action might constitute discrimination inconsistent with or contrary to human rights legislation then legal or Service Office advice should be sought before such action is taken.
EXAMPLES OF UNACCEPTABLE SEXUAL BEHAVIOUR

1. This Annex provides examples of unacceptable sexual behaviour in the ADF. The examples are no more than illustrations of behaviour which may attract action or which have warranted action in the past. No example in this Annex may be used as the authority or justification for disciplinary or administrative action. Each case must be considered on its own merits.

Examples of Sexual Activity Amounting to a Service Offence

2. Activities of a sexual nature which may attract disciplinary action under the Defence Force Discipline Act (DFDA) would include offences under the following sections:
   a. Disobedience of a Lawful Command - Sec 27
   b. Failure to Comply with a Lawful General Order - Sec 29
   c. Assault - Sec 33(a)
   d. Creating a Disturbance - Sec 33(b)
   e. Obscene Behaviour - Sec 33(c)
   f. Using Insulting or Provocative Words - Sec 33(d)
   g. Assault on an Inferior - Sec 34
   h. Prejudicial Behaviour - Sec 60
   i. Sexual offence under Part 111A of the NSW Crimes Act in its application to the Jervis Bay Territory - Sec 61 (note: a charge under Sec 61 should not be laid without prior recourse to legal advice)

By way of example, a course of conduct involving pinching or patting of a subordinate may warrant a charge of assault while unwelcome demands for sexual activity may warrant charges of 'prejudicial behaviour'. Sexual activity which may endanger other personnel should be the subject of disciplinary action. However, an isolated incident involving sexist and objectionable comments or leers and gestures with sexual connotations may warrant firm counselling rather than disciplinary action (repeated incidents of such behaviour, in spite of counselling, would warrant consideration of disciplinary action).

Examples of Sexual Harassment

3. An example of sexual harassment is that of a junior female who is afraid to complain about the sexual advances of her male instructor because he has indicated that she will fail to qualify if she rejects him. Sexual harassment also occurs when the victim objects to the advance, request or conduct and is then unfairly treated in employment. An example would be the removal of a female officer from an appointment because of her outspoken objection to sexually explicit language directed to her by male subordinates.

4. The examples used in paragraph 3 above are not intended to suggest that females are the only victims and males the only perpetrators of sexual harassment. A female member might force the continuation of a sexual relationship with a male superior by threatening to inform his superiors or spread rumours if he does not agree. Fear of official retribution, for instance reposting action, may be the sole reason for the male's continuation of the relationship. Such a threat by the female member may constitute
5. Finally, sexual harassment may occur between members of the same gender. For instance, a female member may be afraid to complain about the unwelcome sexual advances of her female superior because she has good reason to believe she will receive a poor annual assessment if she complains or otherwise objects to the advances. This constitutes sexual harassment.

Examples of Unacceptable Harassment

6. Bullying and other forms of harassment of weaker members by stronger members is sometimes labelled sexual harassment when it is directed by members of one gender against members of the other gender. Such behaviour may not constitute sexual harassment as defined in the SDA; but may nevertheless constitute behaviour contrary to the inherent requirement of ADF service. Group intolerance of, or prejudice against, an individual member for instance because of the individual’s sexual preference, which results in victimisation is also unacceptable harassment. (See also paragraph 14 of Annex A.)

Examples of Unacceptable Sexual Behaviour

7. Any unwelcome sexual advance, unwelcome request for sexual favours or unwelcome conduct of a sexual nature is unacceptable sexual behaviour and warrants disciplinary or administrative action against the perpetrator. (Conduct of a sexual nature includes the making to, or in the presence of a person, a statement of a sexual nature, concerning that person, whether the statement is made orally or in writing.) Unwelcome sexual behaviour does not include action or conduct which reflects mutual respect, friendship or attraction.

8. Some examples of unwelcome sexual behaviour are:
   a. spreading rumours regarding a colleague’s sexual life;
   b. public discussion of sexual activities — with the intention of embarrassing colleagues; and
   c. derogatory remarks to a colleague regarding their sexual appeal.

9. Some other circumstances in which sexual behaviour would be unacceptable, together with the reasons for the unacceptability, include:
   a. indiscriminate sexual relationships between a superior and a subordinate, resulting in damage to unit cohesion and an undermining of the superior’s authority;
   b. public flaunting and advocacy of a particular sexual proclivity, causing offence to members of the member’s group and thus liable to provoke a breakdown in group cohesion and loss of professional respect;
   c. sexual relationships and activities conducted openly in the communal environment of a mess or barrack block, or encouraging younger members to accept participation in such activities as a requirement of communal living;
   d. public identification with radical sexually oriented quasi-political or minority groups in a manner which may discredit the impartiality of the ADF.
General Avenues of Complaint

1. A member who has cause to complain about unacceptable sexual behaviour in the ADF environment should complain to a superior officer in the member’s chain of command. If for any reason this is not appropriate or the member believes that lodgment of a complaint may provoke hostility or disbelief, then an application for redress of grievance should be lodged with the member’s Commanding Officer. (See DI(G) PERS 34-1.) This avenue of complaint places a legal onus on the Commanding Officer to have the matter investigated swiftly and the grievance redressed without victimizing, penalising or prejudicing the complainant.

2. In some circumstances a member may have grounds for not wishing to complain to any authority within the chain of command. The Defence Force Ombudsman may accept the complaint for investigation if he is satisfied special circumstances exist.

Complaints concerning Sexual Harassment

3. While it is preferable that Service action be taken to investigate and resolve complaints of sexual harassment members also have the right to refer the matter to the HREOC, under the provisions of the Sex Discrimination Act. It should be recognised that this avenue may not satisfy the immediate military objective of stopping the harassment, and acting against the offender, in a timely manner.

Complaints by Personnel subjected to Administrative Action

4. When administrative action is considered to be warranted as a result of non-compliance with this instruction the rules of natural justice require that:

a. the member be advised of the proposed action;

b. the member be given access to all adverse material upon which the decision is based; and

c. the member be allowed a reasonable opportunity to comment on the adverse material and the proposed action.

If the affected member is aggrieved by the decision to take administrative action, or the decision making process, then the member may submit an application for redress of grievance.

Complaints Concerning Discrimination.

5. A member who believes that he or she has been discriminated against, contrary to the provisions of Commonwealth human rights legislation, may submit a complaint to the HREOC, however members who are considering this avenue of complaint should be encouraged to use the redress of grievance avenue initially - as a remedy of first resort.

Concurrent Complaints

6. When a complaint is lodged concurrently through more than one avenue of complaint, the ADF, in consultation with relevant external agencies, and where appropriate the complainant, will suspend action on all but one statement of complaint in order to facilitate speedy resolution of the matter and consistency in
PROPOSED TEXT FOR PAMPHLET

UNACCEPTABLE SEXUAL BEHAVIOUR BY MEMBERS OF THE AUSTRALIAN DEFENCE FORCE

The policy on sexual behaviour in the ADF has been updated - mainly to accord with Commonwealth human rights legislation.

This pamphlet explains the main elements of the new policy.

The full instruction is in DI(G) PERS [TBA] and you should read it or have your commander explain it.

Old instructions in DI(G) PERS 15-3 and DI(G) PERS 35-1 have been cancelled.

Sexual relations and activities are a normal part of adult life and are primarily and predominantly a private matter for each individual. The ADF has no concern with the sexual preferences of its members or with their sexual activities, provided they are not unlawful and are not contrary to or inconsistent with the inherent requirements of the Service.

By "inherent requirement" of the Service we mean broadly our operational effectiveness, or our capacity to fight.

The ADF therefore does have an interest and will take action against individuals who undertake sexual activities which affect or are likely to affect:

. our operational effectiveness generally
. our group cohesion - the ability of the unit, crew or group to work together as a team
. our command relationships - the proper functioning of the chain of command
. the health, safety or personal integrity of Servicemen or Servicewomen, particularly subordinates and under-age members

It is neither necessary nor practicable to spell out just what activities are likely to have these effects but it is usually clear when it happens. Commanders will be the judge. Similar actions will produce different effects in different circumstances. For example activities which may be acceptable in a large HQ in Canberra may be quite unacceptable in a warship at sea.
If a member undertakes sexual activities which cause the effects mentioned earlier, he or she will normally attract either disciplinary or administrative action. This includes counselling, adverse report, administrative censure, warning for discharge, involuntary separation from the Service and recommendations affecting posting, promotion or employment.

Note that disciplinary or administrative action is incurred as a result of actions taken - but not on the grounds of proven or suspected sexual preference as in the past.

The new policy recognises that in "on entry" training institutions there is a particular need to restrict sexual activity. and generally prohibits all sexual relations between staff and students and between students within the precincts and when on duty elsewhere.

The ADF is also concerned to prevent sexual harassment which refers to unwelcome sexual advances or requests when the victim believes refusal will result in some disadvantage in employment. The intent of the Sex Discrimination Act is to impose a work environment free from sexual harassment, and the ADF requires such an environment.

The new DI(G) sets out responsibilities of members and commanders and describes channels for reporting misbehaviour and dealing with complaints. You should become familiar with it.
Agendum No 14/1992

UNACCEPTABLE SEXUAL BEHAVIOUR BY MEMBERS OF THE ADF

Attached for consideration by the Chiefs of Staff Committee and the Secretary, Department of Defence, is a draft paper from ACPERS on 'Unacceptable Sexual Behaviour by Members of the ADF'.

L.F. Mahony
Secretary
CHIEFS OF STAFF COMMITTEE

9 March 1992
ACPPERS REPORT TO CHIEFS OF STAFF COMMITTEE

UNACCEPTABLE SEXUAL BEHAVIOUR BY MEMBERS OF THE ADF

References:
A. COSC Minute No 164/1991 (Meeting of 11 December 1991)

INTRODUCTION

1. On 11 December 1991 the Chiefs of Staff Committee endorsed the principles which are to form the basis of a Defence Instruction (General) (DI(G)) PERS entitled: "Unacceptable Sexual Behaviour by Members of the ADF". The Committee agreed that it should consider the final draft of the instruction, following provision of out of session editorial comments. This report encloses the draft DI(G) for consideration by the Chiefs of Staff Committee.

BACKGROUND

2. Reference B sought out of session comments regarding the initial draft DI(G). In January CDF expressed concern about the structure, length and complexity of the instruction. At CDF's direction a fresh instruction was produced by DGSPP and circulated to the Assistant Chiefs of Staff (Personnel) for their observations. Legal advice was also sought. Most of the advice and observations have been incorporated into the enclosed draft.

3. As the draft DI(G) is changed from the earlier policy paper CDF requested that the instruction be referred to the Religious Advisory Committee to the Services. On 3 March the Committee considered that instruction and provided some editorial comments which have been incorporated. The Committee also made the general observation that while the necessity for the instruction is regretted, the Committee considers that it addresses the subject 'in a very responsible way'.

CONTENT OF THE DRAFT DEFENCE INSTRUCTION (GENERAL)

4. The Chiefs of Staff Committee is familiar with, and has endorsed, the intent and principles inherent in the enclosed draft DI(G). Such matters are not raised for re-consideration in this report.

5. A number of suggestions by the Assistant Chiefs of Staff (Personnel) and ASLEG could not be accommodated, either because they were mutually exclusive or because they detracted from the primary objectives and intent of the instruction. Some of the omitted comments are addressed at Annex A. Three issues warrant inclusion in this Report for consideration by the Chiefs of Staff Committee.

COMMITTEE-IN-CONFIDENCE
Supplementary Instructions

6. The earlier decision that the instruction should be as all-embracing as possible to obviate the need for complementary or supplementary instructions has led to a Navy Office concern regarding an existing Defence Instruction (Navy) (DI(N) PERS 40-15) concerning the procedures for dealing with cases of sexual assault. In view of the Chiefs of Staff Committee decision, Navy Office proposed that the DI(N) be appended to the enclosed DI(G).

7. It is not agreed that the Navy instruction should be appended as it concerns a related but discrete subject which is rightfully addressed at single Service level (as it primarily concerns the implementation of policy rather than the promulgation of policy). It is considered that the Chiefs of Staff did not intend such broad application of its earlier decision and it is recommended that the Navy DI(G) PERS 40-15 remain.

8. Another proposed instruction which would be supplementary to the enclosed instruction, and but not viewed as inconsistent with the Chiefs of Staff earlier decision, is a set of guidelines being developed by the Department and the ADF for the handling of sexual harassment at unit level - designed in particular for supervisory staffs in integrated units. There are certain procedural differences between the ADF and the APS; in particular, the use of the Command chain in the ADF (rather than designated ‘specialist’ staff), the different definitions of sexual harassment and the ADF requirement, reflected in the instruction, that sexual harassment is to be usually treated in the first instance as a disciplinary matter. The proposed guidelines are viewed as a necessary tool for implementing the ADF proposed policy instruction in integrated units.

Legal and Investigative Aspects

9. ASLEG (and DGDFLS) provided some very detailed comments and proposed amendments regarding the legal and procedural aspects of dealing with sexual offences under civil and/or military law. The fact that these complex issues were raised indicates the need for some form of instruction or advice to Commanding Officers, but it is not agreed that such issues be included in the enclosed instruction - such material would severely detract from the thrust and intent of the instruction and again the issues concern more the implementation of policy rather than the expression of policy. Instead the Chiefs of Staff Committee may wish to note, for single Service action, that there appears to be need for the promulgation of legal guidance to Commanding Officers regarding the legal and investigative aspects of sexual offences.

Discretion in Application of Policy

10. Army and Navy expressed some differing views regarding the discretion available to Commanding Officers to prohibit sexually related behaviour in the unit. Navy Office would prefer little or no discretion to be available (to ensure maximum consistency and to eliminate the need for supplementary instructions), while Army would prefer to leave maximum discretion in the hands of the Commanding Officer.
11. The proposed provisions resemble most present practices (such as are in force in the Fleet, at ADFA and IRTU) which seem to be reasonable and enforceable. The objective of the instruction should be to provide guidance and suggested parameters (as provided in paragraphs 14 and 15 of Annex A to the instruction) and encourage consistency where feasible and appropriate, while respecting present rules. If Army and Navy views appear to the Chiefs of Staff Committee to be irreconcilable the Committee may wish to consider a middle course: to give the authority to prohibit sexually related behaviour to formation commanders/administrative authorities, rather than to Commanding Officers. This option would ensure consistency across ‘related’ units such as the Fleet or a Brigade and if all other existing provisions are preserved there should be consistency between adjacent units/formations and consistency regarding the extent of the prohibition.

12. It is stressed that prohibition of sexually related behaviour should not extend beyond the parameters in paragraph 6 of the proposed instruction (that is: sexual relations and public displays of affection and private intimacy in the ADF environment and when on duty elsewhere). Any proposal to go further than the extent proposed in the instruction may be viewed as a direct contradiction of the statement in paragraph 1 of the instruction.

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

13. The Human Rights Commissioner and his staff were briefed on the principles decided upon by the Chiefs of Staff Committee on 11 December. The Commission (HREOC) has been supportive and willing to await the finalization of the ADF internal consultative process before making any comment - either to the ADF or to the media. (Though any delay in cancelling the present homosexuality policy may attract criticism.) Informal working level discussions with HREOC staff indicate that the HREOC should not have any difficulty with the instruction if it is endorsed in its present form.

14. The HREOC does not seek to formally comment on the DI(G) after the document has been endorsed by the Chiefs of Staff Committee (as mooted by the Secretary in the previous discussions) because of concern that this step might further delay finalization. However, the Commission has requested that DGPI effect liaison with the HREOC media unit so that the HREOC can prepare an appropriate and supportive media statement for release concurrent with any ADF announcement. This request is supported and has been referred to DGPI.

NEXT ACTIONS

15. If COSC endorses the DI(G) then it is proposed it be submitted to the Minister immediately on his return, for approval of the policy changes, and forwarded to ASLEG for legal clearance prior to promulgation action as a DI(G).

16. It is necessary for DI(G) PERS 15-3 (Homosexuality) and 35-1 (Sexual Harassment) to be cancelled at the time of promulgation of the new instruction.
CONCLUSION

17. The enclosed draft instruction represents so far as is possible the requirements of the several parties involved. Any changes which unravel individual threads of the policy will render vulnerable the whole fabric of the instruction and should therefore be resisted. The need for swift promulgation of the whole policy is now paramount and considerations should be directed to that end.

RECOMMENDATION

18. It is recommended that the Chiefs of Staff Committee:

a. endorse the enclosed draft DI(G) for submission to the Minister for policy approval prior to promulgation action as a DI(G);

b. endorse the cancellation of DI(G) PERS 15-3 and 35-1 concurrent with the promulgation of the new DI(G);

c. in considering the PR plan, note the HREOC proposal that the timing and content of any public statement regarding the new policy be discussed with the HREOC media unit to facilitate a complementary and supportive statement from that body;

d. note the need for supplementary/complementary instructions regarding procedures for the investigation and prosecution of sexual offences (including Navy's present instruction), and the handling of sexual harassment in integrated units.

PERSONNEL DIVISION

4 March 1992

Annex:

A. Service and Legal Comments regarding Draft DI(G) not incorporated into Final Text

Enclosure:

1. Draft Defence Instruction (General): Unacceptable Sexual Behaviour by Members of the ADF.
Paragraph 1 (of enclosed instruction).

1. Army saw reference to 'sexual preference' in paragraph 1 as unnecessary. It was retained because of the Secretary's recommendation to the Chiefs of Staff Committee that we be 'up front' about our changed policy. This view is supported.

Paragraph 4.

2. Air Force Office proposed that sub-paragraph 4f be moved to sub-paragraph 4a. This was not accepted because any unlawful behaviour must attract some action - its inclusion is almost superfluous.

Paragraphs 5 and 6.

3. Air Force Office proposed that paragraph 6 provisions extend to all training establishments. This was not agreed - it may be appropriate in some individual cases in which case paragraph 5 would apply but in many other senior training institutions (for instance JSSC) it would be unenforceable, unnecessary and unreasonable.

4. Navy Office expressed concern at the lack of detailed guidance in these two paragraphs, foreseeing:
   a. inconsistency in application; and
   b. the need for supplementary instructions contrary to COSC's earlier decision;

5. The Navy concerns are acknowledged, but have not been included as they reflect the special requirements of that Service rather than ADF-wide requirements. Such requirements can be addressed by the single Service under the policy, but may require a supplementary instruction. It is considered that such a requirement is reasonable, provided it reflects the parameters of the ADF policy.

6. In particular Navy foresaw a need to be able to prohibit any sexually related behaviour, even between members with civilians when off duty and out of the ADF environment. This is considered beyond the power or right of the ADF to regulate. Such a ban would be viewed as draconian and would attract criticism as an invasion of privacy and denial of individual rights. If the purpose is the prevention of disease it is suggested that such a ban is an ineffectual and unenforceable means of achieving this end. It is suggested that the general provisions of the instruction (in particular paragraph 17) would adequately provide for action when required.

COMMITTEE-IN-CONFIDENCE
7. Navy rejects the need for a general order to lay down the consequences of a breach of the order (see also paragraph 16 of Annex A). Experience in investigating redresses and Ombudsman complaints indicates that it is necessary to spell out the possible administrative consequences—depending on the merits of each individual case, and the requirements within the establishment. Spelling out the consequences of for instance single episodes and repeated breaches ensures consistency within an establishment, especially when commanders change, and ensures all affected members are aware, before the event, of the likely consequences of their actions.

8. Army on the other hand wants increased flexibility in the application of paragraph 5 and sees no reason for Service Offices to be kept informed (Annex A paragraph 15). If it is agreed that Service Offices have no role to play (Army) but that individual Commanding Officers need more guidance or less flexibility than provided in the instruction (Navy), notwithstanding the guidance at paragraph 16 of Annex A) then a middle course might be to authorise formation commanders/administrative authorities to prohibit sexually related behaviour rather than individual Commanding Officers.

Paragraphs 8 and 9.

9. There was considerable comment from ASLEG and DGDFS regarding the need for assessment and reference to legal and superior military authority where an activity appears to constitute both a civil and military offence (especially under Sec 61 of the DFDA). The nature of the comments and proposed replacement paragraphs suggest there is need for a discrete instruction regarding this aspect—from a legal and disciplinary perspective. It is not agreed that the role of this instruction is to provide detailed legal and procedural advice on the methods of effecting a prosecution of a sexual offence.

Paragraph 16.

10. Army would like the last three words of the paragraph to be replaced with ‘should be considered’. While this is a relatively minor point it is considered imprudent for the paragraph to be worded more strongly because of the various legislative provisions regarding victimisation of complainants.

Annex A paragraphs 9 to 12

11. Air Force Office views some of the guidance in these paragraphs as gratuitous advice and not necessary. Regrettably experience in processing complaints, especially complaints and redresses involving sexual behaviour, indicates that the inclusion of such advice to Commanding Officers is essential.

Annex B paragraph 6

12. The relevance of paragraph 6 of Reference B has been questioned (before the last sentence was added). It was originally included because of complaints by students at the Defence Force Academy that they are not sexually harassing female colleagues, but simply trying to pull them into line. The point is valid as illustrates the danger of treating sexual harassment as an exotic form of behaviour. The paragraph is viewed as thoroughly relevant and its inclusion is strongly defended.
Annex C

13. Air Force does not agree with the range of information provided in Annex C. The content of the Annex was determined from the several complaints to external agencies which included evidence of ignorance of avenues of complaint within the Services, especially use of the Command chain in the first instance. Several complaints were referred to the HRBEC in the first instance because of the perception that it was a more effective avenue than the redress of grievance system. This instruction will be read by a very significant number of ADF personnel, out of curiosity at least. It is a major opportunity to inform members of the correct and appropriate avenues of complaint.
INTRODUCTION

1. Sexual relations and activities are a normal part of adult life and are primarily and predominantly a private matter for each individual. The Australian Defence Force (ADF) has no concern with the sexual preferences of its members, or with their sexual activities, provided they are not unlawful and are not contrary to or inconsistent with the inherent requirements of the Service.

AIM

2. The aim of this instruction is to state ADF policy regarding unacceptable sexual behaviour by ADF members and the Service action which may be taken as a consequence.

STATEMENT OF POLICY

3. It is an inherent requirement of ADF service that all ADF members contribute to operational effectiveness, the preservation of group cohesion, respect for command relationships, collective discipline and maintenance of morale. The inherent requirement of the Service places an obligation on Service members to refrain from behaviour which:

a. results in loss of confidence in the member’s ability to contribute to the mutual dependence and collective discipline of the group; or

b. is contrary to, or inconsistent with, military objectives and standards of professional and personal conduct required to achieve such objectives.

4. This obligation defines the limits of ADF concern regarding the sexual behaviour of members. Sexual behaviour which is inconsistent with this obligation is termed unacceptable sexual behaviour and will normally warrant action, either disciplinary or administrative, where such behaviour:

a. is prejudicial or is likely to be prejudicial to group cohesion;

b. is prejudicial or is likely to be prejudicial to command relationships;

c. is prejudicial or is likely to be prejudicial to the attainment of military objectives through reducing the operational effectiveness, health or safety of the individual or the group;

d. takes advantage of, or threatens the person or personal integrity of subordinate or underage persons;

e. brings or has the potential to bring discredit on the ADF; or

f. is unlawful.
5. In certain circumstances in the ADF environment (that is in the environs of the establishment/unit/installation, ship, aircraft or in any other situation in which the member is performing military duty), and in particular in some training and operational elements, any sexually related behaviour may be contrary to the inherent requirements of the Service and therefore warrant prohibition through the promulgation of a general order as defined in the Defence Force Discipline Act (DFDA).

6. In all ADF and single Service ‘on entry’ training institutions, including the Australian Defence Force Academy, sexual relations and public displays of affection and private intimacy between students and staff, and between all students, regardless of their training status, are to be prohibited within the precincts of the institution and during absences from the institution on duty through the promulgation of a general order as defined in the DFDA.

DEFINITION

7. In this instruction “administrative action” is action available to a commander or superior authority to deal with unacceptable behaviour or actions on the part of a member. Administrative action includes, but is not limited to: counselling, adverse report, administrative censure, warning for discharge, involuntary separation from the Service, and recommendations affecting posting, promotion or employment. Administrative action is separate and distinct from disciplinary action, with different rules.

SEXUAL OFFENCES

Offences under Civil Law

8. When a report of sexual activity indicates that an offence may have been committed which is assessed as inappropriate for investigation as an offence under the DFDA, the complainant is to be assisted in reporting the matter to the civil police without delay (or to Service authorities if outside Australia). Cases of sexual assault, in particular, require swift referral so that appropriate counselling and medical/forensic tests can be conducted through the expert resources available to the civil authorities.

Sexual Offences under DFDA

9. Activities of a sexual nature which might attract Service disciplinary action include unwelcome sexual behaviour, sexual harassment, obscene behaviour, use of sexist language which provokes anger and could provoke a disturbance, disobedience of an order regarding the elimination of discriminatory practices, and conduct which encourages divisions or disrespect between personnel. In appropriate cases, conduct in the nature of assault might attract disciplinary action. (Annex B provides examples of some specific offences which may be relevant.)

SEXUAL HARASSMENT

10. The Commonwealth has acted to eliminate sexual harassment in employment, in the Sex Discrimination Act 1984 (SDA). Sexual harassment is defined as an unwelcome sexual advance, or an unwelcome request for sexual favours, or unwelcome conduct of a sexual nature where the subject of such actions (inter alia):
a. has reasonable grounds for believing that a rejection of the advance, a refusal of the request, or the taking of objection to the conduct would disadvantage the member in any way in employment; or

b. is disadvantaged in employment as a result of rejection of the advance, refusal of the request or the taking of objection to the conduct.

11. The SDA imposes an obligation on the ADF and all members to provide a harassment free work environment. The failure by any member to meet this obligation may result in a public hearing before the Human Rights and Equal Opportunity Commission (HREOC) and orders to pay compensation to any victim. Such action would be in addition to any proceedings for a disciplinary or criminal offence.

12. Sexual harassment under the SDA does not of itself constitute an offence although it is unlawful and compensation may be adjudged. However, the conduct giving rise to the allegation or complaint of sexual harassment may constitute a criminal and/or disciplinary offence.

RESPONSIBILITIES REGARDING SEXUAL OFFENCES AND SEXUAL HARASSMENT

Responsibility of All Members

13. It is the responsibility of every member to ensure that complaints of sexual behaviour amounting to an offence and/or sexual harassment in the ADF environment are reported promptly for investigation and resolution (avenues of complaint are detailed in Annex C). All personnel within the command chain are to act on such complaints with speed, thoroughness and impartiality.

Responsibilities of Commanders

14. It is the responsibility of all Commanders to:

a. foster integration, and prevent or eliminate prejudice, unjustified discrimination and sexual harassment;

b. establish an environment where complainants (ie victims and witnesses of sexual behaviour amounting to an offence and/or sexual harassment) are confident they will receive support from their superiors; and

c. to respond promptly, seriously and with sensitivity to allegations of behaviour amounting to an offence and/or sexual harassment.

As sexual harassment has the capacity to seriously erode the mutual respect between superiors, subordinates and peers which is the basis of discipline in the ADF, all allegations not involving a civil offence are to be addressed initially as a potential disciplinary matter; except in those circumstances where it is readily seen that counselling or other administrative action is a more appropriate initial response than disciplinary action. Further guidance for Commanding Officers is at Annex A to this instruction.
Resolution of Complaints Alleging Sexual Harassment

15. In most cases, complaints of sexual harassment can, and should, be resolved at establishment/unit level. Inevitably the issue will require tact and sensitivity and in some cases mediation. Any measures aimed at resolution must include firm steps necessary to ensure there is no recurrence of sexual harassment or victimisation of either party. This may require consideration of posting action or involuntary separation from the Service.

False Allegations of Sexual Offences/Harassment

16. Where it is established that a complaint of a sexual offence or sexual harassment is false and malicious, vexatious or mischievous, then consideration of disciplinary or administrative action against the complainant may be appropriate.

OTHER SEXUAL BEHAVIOUR WARRANTING ADMINISTRATIVE ACTION

17. When a member's sexual behaviour is brought to the attention of the ADF as being inconsistent with or contrary to inherent requirements of ADF service, as stated in paragraphs 3 and 4 of this instruction, or the specific and promulgated requirements of the ADF, Service or unit which are consistent with the requirements in paragraphs 3 and 4, then consideration should be given to taking administrative action. Such unacceptable behaviour is not subject to rigid definition and the administrative action taken in consequence may vary in nature, significance and impact according to the member's rank, appointment or duties. (Annex B describes some examples of unacceptable sexual behaviour.)

Unintended Sexual Harassment

18. Some behaviour labelled sexual harassment may be unintended. Instances include the display of tasteless material, robust language or physical contact which does not adequately respect the recipient. Members who are subjected to such inadvertent or unintended sexual harassment should seek to resolve the matter directly and informally with the offender. If such direct action fails to correct the problem then the member should report the matter to a superior officer. (Avenues of complaint are at Annex C).

COMPLIANCE WITH HUMAN RIGHTS LEGISLATION

19. Nothing in this instruction authorises administrative action which would amount to unlawful discrimination under the Sex Discrimination Act, or which would be inconsistent with or contrary to any human right as recognised in the Human Rights and Equal Opportunity Commission Act.

Annexes:
A. Guidelines for Commanding Officers
B. Examples of Unacceptable Sexual Behaviour
C. Avenues of Complaint
Introduction.

1. This instruction has been prepared to ensure that the ADF as a whole satisfies its legal obligations in a consistent and compassionate manner while recognising and upholding the inherent requirements of ADF service as stated in paragraphs 3 and 4 of the instruction. The identification and handling of sexual behaviour which is unacceptable in the ADF are not matters amenable to set procedural instructions or arbitrary directions to Commanding Officers (compared with the ADF’s drugs policy for instance). The prime responsibility for execution of the policy contained in this instruction must rest with individual Commanding Officers.

2. Commanding Officers are to ensure that all members in their unit are aware of the policy contained in this instruction together with unit sources of advice, counselling and information regarding avenues of complaint.

Guide to Action under this Policy.

3. The instruction addresses unacceptable sexual behaviour in three parts:
   a. sexual offences;
   b. sexual harassment which is unlawful under the Sex Discrimination Act; and
   c. other sexual behaviour which is unacceptable because of its adverse impact on the ADF.

Following are some notes for guidance regarding these provisions.

Sexual Offences.

4. When a report of sexual activity indicates that a civil offence appears to have been committed the complainant is to be assisted in reporting the matter to the civil police without delay (or Service authorities if outside Australia). The Commanding Officer’s prime responsibilities are to ensure that both the alleged offender and the alleged victim are provided with necessary Service assistance and support and to ensure there is no victimisation or retribution within the unit during the course of investigations and judicial proceedings. If it is considered necessary for the effective functioning of the unit that one or more of the members involved be transferred pending completion of police and judicial action then the Commanding Officer should ensure this is arranged in a manner which does not pre-judge the outcome of the judicial proceedings.

Internal handling of Complaints regarding Sexual Harassment

5. Where sexual harassment is of such gravity as to warrant disciplinary action (because of the nature of the conduct, the ranks of the persons involved, the circumstances in which the conduct took place, or a combination of these and other factors) the appropriate charge will depend on the facts of each case. While cases of harassment might be dealt with as ‘prejudicial conduct’ cases where the evidence suggests that an assault may have occurred should be charged under the appropriate provision of the DFPA (See Annex B paragraph 2). Legal advice should be sought in making decisions in such cases.
6. A member may choose to lodge a complaint of sexual harassment with an external agency regardless of Service action already taken. For this reason it is essential that adequate records of the initial complaint, unit investigation and consequential action are taken, ensuring in particular that conversations and interviews are properly recorded.

7. Where a complaint of sexual harassment has been made to more than one agency and referred to the Commanding Officer for response, the Commanding Officer is to forward details to the relevant Service Office for determination of further action, forwarding appropriate interim advice to the agencies involved.

8. If one or more complaints are lodged externally while a redress of grievance on the same grounds is being investigated then it may be necessary for the Commanding officer to seek the complainant’s consent to suspend redress action. Usually this requirement will be initiated by the Service Office in consultation with the Assistant Chief of the Defence Force (Personnel) (ACPERS) who is the ADF’s point of contact for both the Defence Force Ombudsman and the Human Rights and Equal Opportunity Commission. In most circumstances ACPERS provides the ADF response to externally lodged complaints as well as negotiating the initial avenue for action.

Handling of allegations or information regarding Other Sexual Behaviour Warranting Service Action

9. When a member’s sexual behaviour is brought to the attention of the Commanding Officer as being unacceptable (rather than unlawful), then the matter should be investigated discreetly and with sensitivity and the Commanding Officer may subsequently consider taking administrative action.

10. The decision whether or not to act on information regarding a member’s sexual behaviour will not be easy and a Commanding Officer may consider it prudent to seek legal and superior military advice before acting - if only to ensure that the commander’s personal beliefs and opinions will not unduly influence considerations.

11. The timing of considerations regarding administrative action is also difficult. If information is acted upon, without sound evidence of an adverse impact on the ADF, then the reasons for adverse administrative action may be successfully challenged as conjectural and lacking substance. If action is delayed, however, then some extraordinary administrative effort may be required to remedy the situation.

12. Commanding Officers are to observe the following requirements in addressing matters of this nature:

a. the matter is to be handled sensitively and discreetly, and the rules of natural justice are to be applied;

b. the member concerned is to be informed promptly of any investigation and is to be given adequate opportunity to respond to any allegations made against him or her;

c. the member should be counselled against repetition of the behaviour in question where it is found to contravene the requirements of this instruction; and

d. each case is to be considered on its merits using only reliable evidence and considering all relevant factors.
Disciplinary Action

13. In more serious cases the behaviour of the member may warrant consideration of disciplinary action. In addition to sexual assault and other offences involving a victim, a member's sexual behaviour may justify disciplinary action where the behaviour:
   a. may prejudice the discipline of the Defence Force;
   b. may bring discredit on the Defence Force; or
   c. may constitute a breach of a general standing order promulgated by the member's Service or unit.

Group Prejudice

14. Paragraphs 3 and 4 of this instruction place an obligation on individual members to refrain from behaviour which could be prejudicial to group cohesion. In some circumstances group cohesion may be undermined because of the group's intolerance of individual members, warranting consideration of action against the group rather than the individuals affected. Paragraph 14 of the instruction lays down the responsibilities of Commanding Officers regarding group prejudice or intolerance.

Prohibition of Sexually Related Behaviour within the unit

15. A Commanding Officer who decides that the formal prohibition of sexual activities and related behaviour is warranted should be sensitive to the extent of such behavioural restrictions in adjacent units to ensure members in the same environment are not subject to inconsistent rules, leading to resentment and loss of morale. In all cases, before such a prohibition is promulgated the relevant Service Office, or HQ ADF, is to be informed.

16. The prohibition of such conduct, together with the applicable circumstances and conditions, is to be promulgated in relevant general orders as defined in the DFDA. Any such promulgated order is to:
   a. include the nature and scope of administrative action or other consequences which a breach of the order might attract, whether or not the matter is to be dealt with under the DFDA; and
   b. accord with the principles of this instruction.

Commanding Officers must be prepared to justify such action in terms of the beneficial and deleterious effects of such an order, the factors considered to necessitate such action and the enforceability of the order. As guidance, an order prohibiting sexually related behaviour should not normally extend beyond the restrictions to be imposed in 'on entry' training institutions as laid down in paragraph 6 of this instruction.

Compliance with Human Rights Legislation in Execution of Policy

17. The ADF works with the HREOC to ensure that ADF policies and practices are neither inconsistent with nor contrary to federal human rights legislation. Where a Commanding Officer is concerned that a particular administrative action might constitute discrimination inconsistent with or contrary to human rights legislation then legal or Service Office advice should be sought before such action is taken.
EXAMPLES OF UNACCEPTABLE SEXUAL BEHAVIOUR

1. This Annex provides examples of unacceptable sexual behaviour in the ADF. The examples are no more than illustrations of behaviour which may attract action or which have warranted action in the past. No example in this Annex may be used as the authority or justification for disciplinary or administrative action. Each case must be considered on its own merits.

Examples of Sexual Activity Amounting to a Service Offence

2. Activities of a sexual nature which may attract disciplinary action under the Defence Force Discipline Act (DFDA) would include offences under the following sections:
   a. Disobedience of a Lawful Command - Sec 27
   b. Failure to Comply with a Lawful General Order - Sec 29
   c. Assault - Sec 33(a)
   d. Creating a Disturbance - Sec 33(b)
   e. Obscene Behaviour - Sec 33(c)
   f. Using Insulting or Provocative Words - Sec 33(d)
   g. Assault on an Inferior - Sec 34
   h. Prejudicial Behaviour - Sec 60
   i. Sexual offence under Part 111A of the NSW Crimes Act in its application to the Jervis Bay Territory - Sec 61 (note: a charge under Sec 61 should not be laid without prior recourse to legal advice)

By way of example, a course of conduct involving pinching or patting of a subordinate may warrant a charge of assault while unwelcome demands for sexual activity may warrant charges of 'prejudicial behaviour'. Sexual activity which may endanger other personnel should be the subject of disciplinary action. However, an isolated incident involving sexist and objectionable comments or leers and gestures with sexual connotations may warrant firm counselling rather than disciplinary action (repeated incidents of such behaviour, in spite of counselling, would warrant consideration of disciplinary action).

Examples of Sexual Harassment

3. An example of sexual harassment is that of a junior female who is afraid to complain about the sexual advances of her male instructor because he has indicated that she will fail to qualify if she rejects him. Sexual harassment is also when the victim objects to the advance, request or conduct and is then unfairly treated in employment. An example would be the removal of a female officer from an appointment because of her outspoken objection to sexually explicit language directed to her by male subordinates.

4. The examples used in paragraph 3 above are not intended to suggest that females are the only victims and males the only perpetrators of sexual harassment. A female member might force the continuation of a sexual relationship with a male superior by threatening to inform his superiors or spread rumours if he does not agree. Fear of official retribution, for instance reposting action, may be the sole reason for the male's continuation of the relationship. Such a threat by the female member may constitute sexual harassment.
5. Finally, sexual harassment may occur between members of the same gender. For instance, a female member may be afraid to complain about the unwelcome sexual advances of her female superior because she has good reason to believe she will receive a poor annual assessment if she complains or otherwise objects to the advances. This constitutes sexual harassment.

Examples of Unacceptable Harassment

6. Bullying and other forms of harassment of weaker members by stronger members is sometimes labelled sexual harassment when it is directed by members of one gender against members of the other gender. Such behaviour may not constitute sexual harassment as defined in the SDA; but may nevertheless constitute behaviour contrary to the inherent requirement of ADF service. Group intolerance of, or prejudice against, an individual member for instance because of the individual’s sexual preference, which results in victimisation is also unacceptable harassment. (See also paragraph 14 of Annex A.)

Examples of Unacceptable Sexual Behaviour

7. Any unwelcome sexual advance or request for sexual favours or unwelcome conduct of a sexual nature is unacceptable sexual behaviour and warrants disciplinary or administrative action against the perpetrator. (Conduct of a sexual nature includes the making to, or in the presence of a person, a statement of a sexual nature, concerning that person, whether the statement is made orally or in writing.) Unwelcome sexual behaviour does not include action or conduct which reflects mutual respect, friendship or attraction.

8. Some examples of unwelcome sexual behaviour are:

a. spreading rumours regarding a colleague’s sexual life;

b. public discussion of sexual activities - with the intention of embarrassing colleagues; and

c. derogatory remarks to a colleague regarding their sexual appeal.

9. Some other circumstances in which sexual behaviour might be found to be unacceptable, together with the reasons for the unacceptability, include:

a. indiscreet sexual relationships between a senior officer and subordinates, resulting in damage to unit cohesion and an undermining of the officer’s authority;

b. public flaunting and advocacy of a particular sexual proclivity, causing offence to members of the member’s group and thus liable to provoke a breakdown in group cohesion and loss of professional respect;

c. sexual relationships and activities conducted openly in the communal environment of a mess or barrack block, or encouraging younger members to accept participation in such activities as a requirement of communal living;

d. public identification with radical sexually oriented quasi-political or minority groups in a manner which may discredit the impartiality of the ADF.
General Avenues of Complaint

1. A member who has cause to complain about unacceptable sexual behaviour in the ADF environment should complain to a superior officer in the member's chain of command. If for any reason this is not appropriate or the member believes that lodgement of a complaint may provoke hostility or disbelief, then an application for redress of grievance should be lodged with the member's Commanding Officer. (See D/(G) PERS 34-1.) This avenue of complaint places a legal onus on the Commanding Officer to have the matter investigated swiftly and the grievance redressed without victimizing, penalising or prejudicing the complainant.

2. In some circumstances a member may have grounds for not wishing to complain to any authority within the chain of command. The Defence Force Ombudsman may accept the complaint for investigation if he is satisfied special circumstances exist.

Complaints concerning Sexual Harassment

3. While it is preferable that Service action be taken to investigate and resolve complaints of sexual harassment members also have the right to refer the matter to the HREOC, under the provisions of the Sex Discrimination Act. It should be recognised that this avenue may not satisfy the immediate military objective of stopping the harassment, and acting against the offender, in a timely manner.

Complaints by Personnel subjected to Administrative Action

4. When administrative action is considered to be warranted as a result of non-compliance with this instruction the rules of natural justice require that:

a. the member be advised of the proposed action;

b. the member be given access to all adverse material upon which the decision is based; and

c. the member be allowed a reasonable opportunity to comment on the adverse material and the proposed action.

If the affected member is aggrieved by the decision to take administrative action, or the decision making process, then the member may submit an application for redress of grievance.

Complaints Concerning Discrimination.

5. A member who believes that he or she has been discriminated against, contrary to the provisions of Commonwealth human rights legislation, may submit a complaint to the HREOC, however members who are considering this avenue of complaint should be encouraged to use the redress of grievance avenue initially - as a remedy of first resort.

Concurrent Complaints

6. When a complaint is lodged concurrently through more than one avenue of complaint, the ADF, in consultation with relevant external agencies, and where appropriate the complainant, will suspend action on all but one statement of complaint in order to facilitate speedy resolution of the matter and consistency in the advice provided.